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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA

and

VENTURA COUNTY AIR POLLUTION
CONTROL DISTRICT,

Plaintiffs,

v.

DIVERSIFIED PANEL SYSTEMS, INC.,

Defendant.

Civil No.

CONSENT DECREE

1 WHEREAS, Plaintiff United States of America, on behalf of the United
2 States Environmental Protection Agency ("EPA"), and Plaintiff Ventura County
3 Air Pollution Control District ("VCAPCD") are concurrently filing a complaint
4 (the "Complaint") initiating this action against Diversified Panel Systems, Inc.
5 ("DPSI");

6 WHEREAS, the United States alleges that DPSI operated its polystyrene
7 block manufacturing and processing facility in Oxnard, California (the "Facility")
8 in violation of the Ventura County portion of the California State Implementation
9 Plan ("SIP"), and that the violations of the SIP are continuing;

10 WHEREAS, the SIP was approved by EPA pursuant to Section 110 of the
11 Clean Air Act (the "Act"), 42 U.S.C. § 7410;

12 WHEREAS, VCAPCD alleges that DPSI operated the Facility in violation
13 of the VCAPCD's regulations (the "VCAPCD Regulations"), and that the
14 violations of the VCAPCD Regulations are continuing;

15 WHEREAS, DPSI denies the material allegations of the Complaint;

16 WHEREAS, this Consent Decree does not constitute an admission by DPSI
17 of any facts or of any liability;

18 WHEREAS, the United States, VCAPCD and DPSI (collectively, the
19 "Parties") agree that settlement of the civil judicial claims as alleged in the
20 Complaint is in the public interest and that entry of this Consent Decree without
21 further litigation is the most appropriate way to resolve this action;

22 THEREFORE, IT IS ORDERED, ADJUDGED, AND DECREED as
23 follows:

24 25 I. JURISDICTION

26 1. This Court has jurisdiction over the subject matter of this action and over
27 the Parties pursuant to section 113(b) of the Act, 42 U.S.C. § 7413(b), and 28
28 U.S.C. §§ 1331, 1345, and 1355. Venue is proper in this Court pursuant to 42

1 U.S.C. § 7413(b) and 28 U.S.C. §§ 1391(b), 1391(c), and 1395(a). The Complaint
2 states a claim upon which relief may be granted against DPSI pursuant to 42
3 U.S.C. § 7413(b) and supplemental jurisdiction over the claims arising under the
4 laws of California pursuant to 28 U.S.C. § 1367. Pursuant to 42 U.S.C.
5 § 7413(a)(1), notice of the commencement of this action has been given to DPSI
6 and to the State of California (through both the California Air Resources Board and
7 VCAPCD) more than 30 days prior to the filing of this action. DPSI consents to
8 and shall not challenge entry of this Consent Decree nor this Court's jurisdiction to
9 enter, enforce, modify, or terminate this Consent Decree.

11 II. DEFINITIONS

12 2. Terms used in the Consent Decree that are defined in 42 U.S.C. §§ 7401
13 to 7671q or the regulations promulgated thereunder shall have the meaning set
14 forth in such definitions, unless specific definitions are contained herein.

15 3. The following definitions apply to this Consent Decree:

16 a. "Consent Decree" shall mean this Consent Decree and any
17 appendices attached hereto. In the event of conflict between this Consent Decree
18 and any appendices, the Consent Decree shall control.

19 b. "Day" shall mean a calendar day. In computing any period of time
20 under this Consent Decree, where the last day would fall on a Saturday, Sunday, or
21 federal holiday, the period shall run until the close of business of the next working
22 day.

23 c. "DOJ" shall mean the United States Department of Justice.

24 d. "DPSI" shall mean Diversified Panel Systems, Inc. and its officers,
25 employees, agents, servants, and representatives.

26 e. "Effective Date" shall mean the effective date of this Consent
27 Decree, as provided in Paragraph 32.

1 f. "Facility" shall mean DPSI's polystyrene block manufacturing and
2 processing facility in Oxnard, California.

3 g. "Facility Interest" shall mean any ownership interest in or affecting
4 the Facility or right to operate the Facility, including but not limited to the sale,
5 lease, or licensing of others to operate all or part of the Facility.

6 h. "Notify" and "submit" and other terms signifying an obligation to
7 transmit or communicate documents and information shall mean to deliver in
8 person, deposit in the United States mail, or dispatch by express courier or
9 overnight delivery service not later than the day that such transmission or
10 communication is required by this Consent Decree. Should such day be a weekend
11 day or a federally or state recognized holiday, the delivery, deposit, or dispatch
12 shall be due on the next business day. Notifications and submissions to EPA shall
13 be governed by the provisions of Subparagraph 17.c to the extent that those
14 provisions conflict with this Subparagraph.

15 i. "Paragraph" shall mean any portion of this Consent Decree
16 designated by an arabic numeral.

17 j. "Parties" shall mean the United States, VCAPCD and DPSI.

18 k. "Section" shall mean any portion of this Consent Decree
19 designated by a roman numeral.

20 l. "Subparagraph" shall mean any portion of this Consent Decree
21 designated by a lower case letter or lower case roman numerals.

22 m. "United States" shall mean the United States of America,
23 including its departments, agencies and instrumentalities.

24 n. "VCAPCD" shall mean the Ventura County Air Pollution Control
25 District.

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III. CIVIL PENALTY

4. DPSI shall pay a civil penalty to the United States of ONE HUNDRED FIFTY-TWO THOUSAND FOUR HUNDRED TWENTY-FIVE DOLLARS (\$152,425), plus interest through the date of payment. Interest shall accrue from the date of lodging of this Consent Decree through the date of payment. DPSI shall make this payment, together with all accrued interest, in accordance with the requirements of Section VI (Payments to the U.S. Under This Consent Decree), Paragraph 13, and within the latter of THIRTY (30) days of the Effective Date of this Consent Decree or TEN (10) days of receiving the Electronic Fund Transfer procedures from the United States, as provided in Section VI (Payments to the U.S. Under This Consent Decree), Paragraph 13.a.

IV. INJUNCTIVE RELIEF

5. DPSI shall meet the following requirements relating to construction and operation of the Facility and emissions controls.

a. Authority to Construct Permit ("ATC") and Temporary Permit to Operate ("TPTO"). DPSI was issued an ATC by VCAPCD on February 7, 2002 for installation and operation of emissions controls at the Facility (the "Emissions Control Equipment"), including the specified emissions limits, emissions capture efficiencies and emissions destructions efficiencies (collectively, the "Emissions Standards"), as well as the limits on the Facility's operations (the "Operational Limits") and obtaining offsets. DPSI has installed the Emissions Control Equipment and obtained the requisite offsets to comply with the ATC, and VCAPCD issued a TPTO to DPSI to commence operation of the Emissions Control Equipment at the Facility on May 1, 2003. DPSI shall operate the Facility to comply with the ATC and the TPTO until such time as a final permit to operate ("PTO") is issued in accordance with Paragraph 5.c. A copy of the ATC is

1 attached hereto as Exhibit A, and a copy of the TPTO is attached hereto as
2 Exhibit B.

3 b. Emissions Source Test. The following requirements pertain to the
4 test required to determine whether the Facility meets the Emissions Standards:

5 i. No later than TWENTY (20) days after entry of this Consent
6 Decree, DPSI shall submit to EPA for approval a proposed emissions
7 control test protocol. A copy of the proposed emissions test protocol
8 shall be concurrently submitted to VCAPCD. The proposed test
9 protocol shall require DPSI to demonstrate compliance with the
10 Emissions Standards, and shall include all of the following
11 requirements, unless otherwise agreed in writing by EPA and
12 VCAPCD:

13 (1) Where applicable, the proposed test protocol shall
14 require the use of methods prescribed by EPA's "Guidelines for
15 Determining Capture Efficiency" (January 9, 1995) and 40
16 C.F.R. Part 51, Appendix M, Methods 204 - 204F.

17 (2) The proposed test protocol shall require
18 measurement of gaseous reactive organic compound ("ROC")
19 emissions using EPA Reference Method 18, 40 C.F.R. Part 60,
20 Appendix A-6.

21 (3) The proposed test protocol shall require selection of
22 sampling points and traverse points for the velocity traverse in
23 accordance with EPA Method 1, 40 C.F.R. Part 60, Appendix
24 A-1.

25 (4) The proposed test protocol shall require
26 determination of velocity and volumetric flow rate of the inlet
27 and outlet gas streams in accordance with EPA Method 2, 40
28 C.F.R. Part 60, Appendix A-1.

1 (5) The proposed test protocol shall require the Facility
2 to operate under normal operating conditions throughout the
3 test period, processing raw bead at a rate of at least 12,800
4 pounds over an eight hour period.

5 (6) The proposed test protocol shall require the Facility
6 to use raw bead containing a pentane concentration of no less
7 than 5.5% during the test period. The proposed test protocol
8 shall also require DPSI to test the concentration of pentane in
9 the raw bead in accordance with BAAQMD Method 45
10 (BAAQMD Manual of Procedures, Volume III), and to take
11 triplicate samples of representative raw bead samples from each
12 gaylord of beads, from at least 6 inches below the surface and
13 within five minutes of opening the gaylord, before the beads
14 from the gaylord are processed.

15 ii. Within TWENTY (20) days of receipt of EPA's comments
16 on the proposed test protocol, DPSI shall submit a written response to
17 EPA, with a copy to VCAPCD. The response shall include a revised
18 proposed test protocol implementing or addressing all of the
19 comments it receives, whether from EPA or VCAPCD. If DPSI's
20 revised proposed test protocol does not incorporate all of the changes
21 called for, whether by EPA or VCAPCD, DPSI shall provide EPA and
22 VCAPCD with a detailed explanation of why the changes proposed by
23 EPA and/or VCAPCD could not be implemented. In the event that
24 DPSI believes that the comments by EPA and VCAPCD conflict in
25 any way, DPSI shall identify each perceived conflict and explain why
26 DPSI believes the comments conflict. After consultation with
27 VCAPCD, EPA will send to DPSI either a written approval of the
28 revised proposed test protocol or a notification that DPSI's revised

1 proposed test protocol is deficient. Within TEN (10) days of receipt
2 of a deficiency notification, DPSI shall submit a second revised
3 proposed test protocol to EPA, with a copy to VCAPCD, addressing
4 all issues identified by EPA and/or VCAPCD. After consultation with
5 VCAPCD, EPA will send to DPSI either a written approval of the
6 second revised proposed test protocol or a disapproval with
7 comments. In the event the second revised proposed test protocol is
8 disapproved, DPSI shall be deemed in violation of the terms of this
9 Consent Decree until a revised proposed test protocol is submitted by
10 DPSI and approved by EPA, unless EPA's disapproval of the second
11 revised test protocol is nullified as a result of dispute resolution
12 procedures pursuant to Section IX (Dispute Resolution), Paragraph
13 16.

14 iii. No later than FIFTEEN (15) days after EPA approves the
15 proposed test protocol as provided in Subparagraphs 5.b.i and
16 5.b.i.(6), DPSI shall provide notice to EPA and to VCAPCD of the
17 date that it will conduct the source test. DPSI shall set the date of the
18 source test no earlier than THIRTY (30) days, and no later than
19 FORTY-FIVE (45) days, after the date that the notice is provided,
20 unless EPA agrees otherwise in writing. DPSI shall conduct the
21 source test on the date specified in the notice, and shall allow EPA
22 and VCAPCD to witness the test in its entirety and take split samples.

23 iv. Within FORTY-FIVE (45) days after the completion of the
24 source test, DPSI shall provide a report describing the testing and its
25 results to EPA and VCAPCD.

26 (1) If the source test demonstrates that the Facility's
27 operations have met the Emissions Standards, DPSI shall
28 submit to EPA and VCAPCD, along with the report required

1 pursuant to Subparagraph 5.b.iv, a written certification to EPA
2 and VCAPCD that it has met these standards.

3 (2) If the source test fails to demonstrate that the
4 Facility's operations have met the Emissions Standards, DPSI
5 shall include in its report its conclusion as to whether the failure
6 resulted from error(s) in the source test or failure of the
7 Emissions Control Equipment and/or the Operational Limits to
8 meet the Emissions Standards, including the data and reasoning
9 substantiating its conclusion.

10 (a) If DPSI concludes that the failure resulted
11 from error(s) in the source test, and if VCAPCD and EPA
12 both determine, in writing, that DPSI is correct in its
13 conclusion that the source test failure was due to error(s)
14 in the source test, DPSI shall, within THIRTY(30) days
15 of receipt of the latter determination, submit a post-
16 failure revised test protocol meeting the requirements
17 provided in Subparagraph 5.b.i to EPA and VCAPCD.
18 The provisions of Subparagraphs 5.b.iii through
19 5.b.iv.(2) shall apply to this post-failure revised test
20 protocol, except that if the source test again fails to
21 demonstrate that the Facility's operations have met the
22 Emissions Standards, DPSI shall be deemed in violation
23 of the terms of this Consent Decree until DPSI conducts
24 a source test demonstrating that the Facility's operations
25 have met the Emissions Standards and has submitted the
26 written report and certification required under
27 Subparagraph 5.b.iv.(1) to EPA and VCAPCD.
28

(b) If DPSI concludes that the source test failure was due to the failure of the Emissions Control Equipment and/or the Operational Limits to meet the Emissions Standards, or if either EPA or VCAPCD send DPSI a written notification after a submission pursuant to Subparagraph 5.b.iv.(2)(a) that EPA or VCAPCD believes the failure was due to the Emissions Control Equipment and/or the Operational Limits, then, within the earlier of THIRTY (30) days of DPSI's submission of such conclusion or its receipt of such determination, DPSI shall submit to EPA and VCAPCD proposed revisions to the Emissions Control Equipment and/or to the Operational Limits specified in the ATC intended to correct the deficiencies. Within THIRTY (30) days of DPSI's receipt of the latter of VCAPCD's issuance of a revised ATC and EPA's written approval of the terms of the revised ATC, DPSI shall again conduct the source test described in the test protocol approved pursuant to Subparagraphs 5.b.i and 5.b.i.(6), provided, however, that if the changes to the Emissions Control Equipment and/or to the Operational Limits require a change in the test protocol, DPSI must first obtain approval for the revisions to the test protocol, following the provisions of Subparagraphs 5.b.i and 5.b.i.(6). The provisions of Subparagraphs 5.b.iii through 5.b.iv.(2) shall apply, except that if the source test again fails to demonstrate that the Facility's operations have met the Emissions Standards, DPSI shall be deemed in violation of the

1 terms of this Consent Decree until DPSI conducts a
2 source test demonstrating that the Facility's operations
3 have met the Emissions Standards and has submitted the
4 written report and certification required under
5 Subparagraph 5.b.iv.(1) to EPA and VCAPCD.

6 c. Final PTO & Facility Operation. After the completion of a source
7 test that demonstrates that the Facility's operations have met the Emissions
8 Standards as provided in Subparagraph 5.b, DPSI shall request VCAPCD to issue
9 the final PTO, which shall incorporate all of the limits contained in the ATC
10 (including the Operational Limits as well as the Emissions Standards), including
11 any modifications to the ATC determined to be necessary through the source test
12 process as provided in Subparagraph 5.b. DPSI shall operate the Facility and its
13 equipment to comply with the requirements specified in the ATC and the final
14 PTO.

15 d. Performance Reports. Following issuance of the final PTO, and
16 until the termination of this Consent Decree, DPSI shall submit quarterly
17 performance reports to EPA and VCAPCD. The performance reports shall be
18 postmarked by the 30th day following each calendar quarter and shall state whether
19 there was any period of operation during the quarter in which any emissions limit
20 specified in the final PTO is not met. If there was any failure to meet emissions
21 limits, the report shall specify the magnitude of any excess emissions, any
22 conversion factors used, the date and time of commencement and completion of
23 each time period of excess emissions, the nature and cause of any malfunction (if
24 known), and the corrective action taken or preventative measures adopted.

25 26 **V. STIPULATED PENALTIES**

27 6. DPSI shall pay the following stipulated penalties for failure to comply
28 with this Consent Decree:

1 a. Failure to Provide Timely, Accurate and Complete Notices and
2 Reports. If DPSI fails to provide any notice or report required by this Consent
3 Decree by the date due, with the exception of any notice or report required by
4 Subparagraph 5.b, Paragraph 7 or Paragraph 29, DPSI shall pay a stipulated
5 penalty of \$1500 per day for each day that the notice or report is late. If DPSI files
6 any notice or report with incomplete, inaccurate, or missing information, DPSI
7 shall provide EPA with a revised report within ten working days of its receipt of
8 written notification from EPA of the nature of the problem. DPSI shall pay a
9 stipulated penalty of \$1500 per day for each day the revised report is late. If DPSI
10 disputes EPA's request for a revised report, DPSI may initiate dispute resolution
11 procedures pursuant to Section IX (Dispute Resolution), Paragraph 16.

12 b. Failure to Meet Injunctive Requirements of Section IV. Except as
13 may be excused under Section VIII (Force Majeure), Paragraph 15, and excluding
14 the notice and reporting requirements for which stipulated penalties are described
15 in Subparagraph 6.a, DPSI shall be liable for stipulated penalties for failure to
16 comply with the requirements of Section IV (Injunctive Relief), Paragraph 5, as
17 prescribed in this Subparagraph. For each day DPSI fails to comply with any
18 requirement of Paragraph 5 other than the notice and reporting requirements
19 subject to Subparagraph 6.a, DPSI shall pay a stipulated penalty for each violation
20 as follows:

<u>Penalty per day</u>	<u>Number of days of violation</u>
\$2,500	first through fifteenth
\$5,000	sixteenth through thirtieth
\$10,000	each day beyond thirtieth

25 c. Failure to Make Timely Payments of Civil Penalty. DPSI shall
26 pay a stipulated penalty of \$5,000 per day for failure to timely pay the civil penalty
27 required by Section III (Civil Penalty), Paragraph 4.

1 d. Failure to Comply with Right of Entry. DPSI shall pay a stipulated
2 penalty of \$5,000 per day for failure to comply with the right of entry granted by
3 Section VII (Right of Entry), Paragraph 14.

4 7. DPSI shall notify EPA in writing of any failure to meet Consent Decree
5 requirements for which stipulated penalties may be due as soon as it has
6 knowledge of such failure.

7 8. Except as otherwise provided in Subparagraph 6.a, all stipulated penalties
8 shall begin to accrue on the day after the complete performance is due or the day
9 that a violation occurs, and shall continue to accrue through the final day of the
10 completion of the activity or the correction of the noncompliance. Nothing herein
11 shall preclude the simultaneous accrual of separate stipulated penalties for separate
12 violations of this Consent Decree. Penalties shall accrue as provided in Paragraph
13 6 regardless of whether EPA or VCAPCD has or have notified DPSI of a violation.

14 9. Any stipulated penalty accruing pursuant to this Consent Decree shall be
15 payable upon demand and due not later than THIRTY (30) days from EPA's
16 written demand. Stipulated penalties shall be paid in the manner set forth in
17 Section VI (Payments to the U.S. Under This Consent Decree), Paragraph 13.b.

18 10. If DPSI fails to pay stipulated penalties owed pursuant to this Consent
19 Decree within THIRTY (30) days of receipt of a written demand, it shall pay
20 interest on the late payment for each day of late payment after the initial thirty-day
21 time period. The rate of interest shall be the most recent interest rate determined
22 pursuant to 28 U.S.C. § 1961.

23 11. If DPSI disputes its obligation to pay part or all of a stipulated penalty,
24 its sole recourse is to initiate the dispute resolution process prescribed under
25 Section IX (Dispute Resolution), Paragraph 16. If DPSI invokes dispute
26 resolution, DPSI shall: (i) pay to the United States any amount that it does not
27 dispute, and (ii) establish an interest-bearing escrow account and deposit any
28 disputed amount into the account no later than TWENTY (20) days of the date of

1 the written demand for the stipulated penalty. If the dispute is resolved in DPSI's
2 favor, DPSI may retrieve the escrowed amount plus any accrued interest.
3 Otherwise, the United States shall be entitled to the portion of the escrowed
4 amount as determined through the dispute resolution process of Paragraph 16, plus
5 the interest accrued on such amount, and DPSI shall arrange for the disbursement
6 of the amount payable to the United States within THIRTY (30) days of the final
7 determination resulting from the dispute resolution process. DPSI shall make this
8 payment in the manner set forth in Section VI (Payments to the U.S. Under This
9 Consent Decree), Paragraph 13.b. DPSI may retrieve any balance in the escrow
10 over the amount payable to the United States plus the accrued interest on that
11 balance.

12 12. Payment of stipulated penalties for a violation of this Consent Decree
13 shall not preclude the United States nor VCAPCD from seeking additional
14 monetary penalties or other relief in Court for the violations that led to stipulated
15 penalties. In addition, the United States and VCAPCD reserve their rights to
16 pursue any or all relief for any or all violations directly in Court and outside the
17 provisions of this Consent Decree.

18 19 **VI. PAYMENTS TO THE U.S. UNDER THIS CONSENT DECREE**

20 13. DPSI must follow the requirements of this Paragraph in making
21 payments required under this Consent Decree

22 a. DPSI must make the civil penalty payment required by Paragraph 4
23 by Electronic Fund Transfer ("EFT") to the U.S. Treasury according to current
24 United States EFT procedures. The United States will provide a copy of current
25 EFT procedures to DPSI. Concurrently with any EFT payment made under this
26 Consent Decree, DPSI shall fax notice of payment to the person designated as
27 "Point of Contact" on the EFT instructions, and shall send notice of payment to
28 EPA and DOJ. The notice of payment shall identify: (1) the date and amount of

1 money transferred; (2) the name and address of the transferring bank; (3) this
2 Consent Decree by caption, civil action number, and Effective Date; (4) DOJ
3 #90-5-2-1-07680; and (5) a description of the reason for the payment (including
4 the Paragraph or Subparagraph number(s) of this Consent Decree that are most
5 relevant to the payment).

6 b. DPSI must pay any stipulated penalties required by this Consent
7 Decree by certified or cashier's check in the amount due, payable to the "U.S.
8 Department of Justice," and referencing this Consent Decree by caption, civil
9 action number, and Effective Date, and DOJ #90-5-2-1-07680. DPSI must deliver
10 any such payments by certified mail with return receipt requested to:

11 United States Attorney, Central District of California
12 Attention: Financial Litigation Unit
13 300 N. Los Angeles Street
Los Angeles, California 90012

14 Concurrently with making any payment for stipulated penalties, DPSI must send
15 notice of payment to EPA and DOJ, directed to the addresses provided in Section
16 X (Notification), Paragraph 17. The notice of payment shall also identify: (i) the
17 specific provision of Section IV (Stipulated Penalties), Paragraph 6 related to such
18 payment, and (ii) a description of the violation(s) of this Consent Decree for which
19 the stipulated penalties or interest are being tendered.

20 VII. RIGHT OF ENTRY

21 14. DPSI shall provide EPA and VCAPCD and their respective contractors,
22 consultants, and agents with access to enter the Facility at all reasonable times,
23 upon proper presentation of credentials, for the purposes of inspecting,
24 investigating or verifying compliance with the Act or the terms of this Consent
25 Decree. This provision in no way limits or otherwise affects any right of entry held
26 by EPA or by VCAPCD pursuant to applicable federal, state, or local laws,
27 regulations, or permits.
28

VIII. FORCE MAJEURE

15. DPSI shall satisfy the requirements of Section IV (Injunctive Relief), Paragraph 5 except to the extent, and for the period of time, that such performance is prevented or delayed by events that constitute a force majeure, as provided in this Section.

a. For the purposes of this Consent Decree, a force majeure is defined as any event arising from causes beyond the control of DPSI and that cannot be overcome by DPSI's diligent and timely efforts. Economic hardship, normal inclement weather, and increased costs of performance are not to be considered events beyond the reasonable control of DPSI for purposes of determining whether an event is a force majeure.

b. Within 72 hours after DPSI first learns of an actual or potential event that may delay or prevent the performance of any obligation under this Consent Decree and that DPSI believes is, or may be, a force majeure, DPSI shall notify the Chief, Air Enforcement Office, Air Division of EPA, Region 9, by telephone at (415) 972-3988, and shall also call the Manager of the Compliance Division of VCAPCD at (805) 645-1410. DPSI shall also send a written notification to EPA and VCAPCD within SEVEN (7) days of DPSI's knowledge of the event. The written notification shall fully describe the event that DPSI believes may delay or prevent performance; the activities that may be delayed or prevented; the reasons for the delay; the reasons why DPSI believes that the delay is beyond its reasonable control; the anticipated duration of the delay; the actions DPSI has taken or intends to take to prevent or minimize the delay; a schedule for implementation of any measures DPSI intends to take to mitigate the effect of the delay; and the time needed to implement any directly delayed and/or dependent activities. DPSI shall adopt all reasonable measures to avoid or minimize any delay caused by a force majeure.

1 c. In the event of a force majeure, the time for performance of the
2 activity delayed by the force majeure shall be extended for the time period of the
3 delay attributable to the force majeure. EPA, in its discretion, may extend the time
4 for performance of any activity that EPA determines is dependent on the delayed
5 activity.

6 d. Within SEVEN (7) days after receiving notice from DPSI of a
7 force majeure, EPA will provide written notification to DPSI stating whether
8 DPSI's request for a delay is justified. EPA's failure to respond to a request for a
9 delay shall be deemed a denial of that request. If DPSI disagrees with EPA's
10 determination, it may initiate dispute resolution procedures pursuant to Section IX
11 (Dispute Resolution), Paragraph 16.

12 e. DPSI's failure to comply with the force majeure notice
13 requirements provided in Subparagraph 15.b for any delay in performance shall be
14 deemed an automatic forfeiture of its right to assert that the delay was caused by a
15 force majeure unless such failure to provide notice was caused by a force majeure.
16

17 IX. DISPUTE RESOLUTION

18 16. The dispute resolution procedures of this Section shall be the exclusive
19 mechanism to resolve disputes arising under or with respect to this Consent Decree
20 between DPSI and the United States. However, the United States is not limited to
21 the use of the procedures in this Section if it chooses to enforce obligations of
22 DPSI's that have not been disputed in accordance with this Section.

23 a. Informal Dispute Resolution. In order for DPSI to initiate dispute
24 resolution relating to any dispute that arises between DPSI and the United States
25 under or with respect to this Consent Decree, DPSI must submit a written notice to
26 EPA and DOJ outlining the nature of the dispute and requesting informal
27 negotiations to resolve the dispute. DPSI will be deemed to have waived its right
28 to invoke dispute resolution under this Section unless it submits its written notice

1 within TEN (10) days from the date upon which the issue in dispute first arose.
2 EPA's receipt of this written notice will initiate a period of informal negotiations,
3 which shall not extend beyond twenty (20) working days unless the EPA and DPSI
4 agree otherwise.

5 b. Formal Dispute Resolution. If the informal negotiations under
6 Subparagraph 16.a do not resolve the dispute, the determination of EPA shall
7 control unless DPSI invokes formal dispute resolution under this Subparagraph.
8 In order to invoke formal dispute resolution, DPSI must submit a written statement
9 of position to the EPA and DOJ within THIRTY (30) days after the termination of
10 the informal dispute resolution. DPSI's statement of position shall include any
11 supporting factual data, analysis, opinion, or documentation that DPSI believes
12 EPA should consider in its determination.

13 i. Within THIRTY (30) days after receiving DPSI's statement
14 of position, the United States will submit to DPSI its own statement of
15 position. EPA will maintain an administrative record of DPSI's
16 statement of position, the United States' statement of position,
17 including all supporting documentation submitted with the statements
18 of position, and all other documents EPA takes into consideration in
19 reviewing the matter under dispute and coming to its final
20 determination.

21 ii. Within FIFTEEN (15) days after receiving the United
22 States' statement of position, DPSI may submit a written reply to EPA
23 and DOJ.

24 iii. The Director of the Air Division, EPA Region IX (the
25 "Director"), will issue a final decision resolving the matter in dispute,
26 based on the administrative record compiled in accordance with
27 Subparagraph 16.b.i. If the Director has not issued a decision within
28 NINETY (90) days of EPA's receipt of the DPSI's reply, or, if DPSI

1 chose not to send a reply, within ONE HUNDRED (100) days of the
2 United States' issuance of its statement of position, DPSI may submit
3 a written request for a decision to the EPA and DOJ. If the Director
4 has not issued a decision within THIRTY (30) days of EPA's receipt
5 of DPSI's request for a decision, DPSI's position shall be deemed to
6 have been denied. The decision of the Director shall be binding upon
7 DPSI, subject only to DPSI's right to seek judicial review in
8 accordance with Subparagraph 16.b.iv.

9 iv. The decision issued by EPA under Subparagraph 16.b.iii
10 shall be reviewable by this Court only if DPSI files a timely motion
11 with this Court for dispute resolution. Any such motion must be filed
12 within THIRTY (30) days after the Director issues a decision or has
13 been deemed to have denied DPSI's position pursuant to
14 Subparagraph 16.b.iii. The motion must be concurrently submitted to
15 DOJ and EPA, and DPSI shall not set the motion for hearing sooner
16 than FORTY-FIVE (45) days after the motion has been filed. The
17 United States shall then have THIRTY (30) days to respond to DPSI's
18 motion. The Court's decision in any such dispute resolution
19 proceeding shall be based on the administrative record compiled
20 pursuant to Subparagraph 16.b.i, and the Court shall uphold EPA's
21 determination unless DPSI proves, by a preponderance of the
22 evidence, that the determination was arbitrary and capricious or
23 otherwise not in accordance with law.

24 c. DPSI's invocation of dispute resolution procedures under this
25 Section will not, and shall not be deemed to, extend, postpone, or affect in any way
26 any of DPSI's obligations under this Consent Decree that are not directly in
27 dispute, unless the United States agrees otherwise. Stipulated penalties with
28 respect to the disputed matter shall continue to accrue without regard to the

1 invocation of dispute resolution procedures, and DPSI's payment obligations shall
2 be governed by the provisions of Paragraph 11.

3 4 **X. NOTIFICATION**

5 17. Except as otherwise specifically stated, all notices and submissions shall
6 meet the following requirements:

7 a. Reference Information. All notices and reports submitted to EPA
8 or DOJ shall reference this Consent Decree, citing case name, court docket
9 number, and Effective Date, and DOJ #90-5-2-1-07680.

10 b. Certification Statement. DPSI shall ensure that all submissions to
11 EPA are signed and affirmed by a responsible official of DPSI using the following
12 certification statement:

13 I certify under penalty of law that this document and all attachments
14 were prepared either by me personally or under my direction or
15 supervision according to a system designed to assure that qualified
16 personnel properly gather and evaluate the information submitted.
17 Based on my personal knowledge or inquiry of the person or persons
18 who manage the system, or those persons directly responsible for
19 gathering the information, the information submitted is, to the best of
20 my knowledge and belief, true, accurate, and complete. I am aware
21 that there are significant penalties for submitting false information,
22 including the possibility of criminal fine and imprisonment for
23 knowing and willful submission of a materially false statement.

24 c. Mailing Method and Address for Notices and Submissions from
25 DPSI to EPA. DPSI shall use certified mail, express mail, or similar overnight
26 mail delivery service with return receipt requested for all notices and submissions
27 it is required to send to EPA, and shall address all such notices and submissions to:

28 Director, Air Division (AIR-1)
U.S. Environmental Protection Agency, Region 9
75 Hawthorne Street
San Francisco, California 94105
Attn: Margaret Waldon, AIR-5

d. Mailing Address for U.S. Department of Justice. DPSI shall
address all notices and submissions it is required to send to DOJ to:

1 Chief, Environmental Enforcement Section
2 U.S. Department of Justice
3 Environment and Natural Resources Division
4 United States Department of Justice
5 P.O. Box 7611
6 Washington, D.C. 20044
7 [standard U.S. Postal Service mailing address]

8 Chief, Environmental Enforcement Section
9 U.S. Department of Justice
10 Environment and Natural Resources Division
11 United States Department of Justice
12 1425 New York Avenue N.W., 13th Floor
13 Washington, D.C. 20005
14 [overnight mail and other deliveries]

15 Chief, Civil Division
16 United States Attorney's Office
17 Assistant United States Attorney
18 Central District of California
19 300 N. Los Angeles Street
20 Los Angeles, California 90012

21 e. Mailing Address for DPSI. All notices required to be sent to DPSI
22 shall be addressed to:

23 Richard C. Bell
24 Chief Executive Officer
25 Diversified Panel Systems, Inc.
26 2345 Statham Blvd.
27 Oxnard, California 93033

28 William B. Steinmeyer
Steinmeyer Roth, L.L.P.
280 E. Thousand Oaks Blvd., Ste. A
Thousand Oaks, California 91360

29 f. Mailing Address for VCAPCD. All notices required to be sent to
30 VCAPCD shall be addressed to:

31 Manager, Compliance Division
32 Ventura County Air Pollution Control District
33 669 County Square Drive, 2nd Floor
34 Ventura, California 93003

35 XI. MISCELLANEOUS

36 18. Entry of this Consent Decree and compliance with the requirements
37 herein shall be in full settlement and satisfaction of the civil judicial claims of the
38 United States against DPSI as alleged in the Complaint filed in this action and the

1 Notice of Violation ("NOV") dated September 24, 1999. With respect to civil
2 judicial claims of the United States, this Consent Decree resolves only those
3 matters specifically alleged in the Complaint filed in this action and the NOV,
4 through the date of lodging of this Consent Decree.

5 19. Entry of this Consent Decree and compliance with the requirements
6 herein shall also be in full settlement and satisfaction of the civil judicial claims of
7 VCAPCD as alleged in the Complaint filed in this action. With respect to civil
8 judicial claims of VCAPCD, this Consent Decree resolves only those matters
9 alleged in the Complaint filed in this action, through the date of lodging of this
10 Consent Decree.

11 20. Except as specifically provided in Paragraph 18, the United States does
12 not waive any rights or remedies available to it for violation by DPSI of federal or
13 state laws or regulations. This Consent Decree shall in no way affect the United
14 States' ability to bring future actions for any matters not specifically alleged in the
15 Complaint filed in this action or in the NOV, through the date of lodging of this
16 Consent Decree, and settled by this Consent Decree. Nothing in this Consent
17 Decree shall diminish EPA's ability to request information from DPSI under
18 applicable laws or regulations.

19 21. Except as specifically provided in Paragraph 19, VCAPCD does not
20 waive any rights or remedies available to it for violation by DPSI of federal or state
21 laws or regulations. This Consent Decree shall in no way affect VCAPCD's ability
22 to bring future actions for any matters not specifically alleged in the Complaint
23 filed in this action, through the date of lodging of this Consent Decree, and settled
24 by this Consent Decree. Nothing in this Consent Decree shall diminish
25 VCAPCD's ability to request information from DPSI under applicable laws or
26 regulations.

27 22. Nothing in this Consent Decree is intended to nor shall be construed to
28 operate in any way to resolve any criminal liability of DPSI.

1 23. This Consent Decree in no way affects DPSI's responsibilities to
2 comply with all federal, state, or local laws and regulations. This Consent Decree
3 is not, and shall not be construed as, a permit or a modification of a permit.

4 24. This Consent Decree does not limit or affect the rights of the United
5 States, VCAPCD or DPSI against any third parties (parties not specifically part of
6 this Consent Decree), nor does it limit the rights of such third parties against DPSI.
7 This Consent Decree shall not be construed to create any rights in, or grant any
8 cause of action to, any person not a party to this Consent Decree.

9 25. DPSI covenants not to sue and agrees not to assert any claims or causes
10 of action against the United States or VCAPCD with respect to the allegations
11 contained in the Complaint. DPSI further agrees not to seek indemnification or
12 reimbursement of the amount of the civil penalty due pursuant to Paragraph 4 from
13 any agency or department of the federal, state or local government.

14 26. Each of the Parties shall bear its own costs and attorney's fees in this
15 action.

16 27. This Consent Decree contains the entire agreement between the Parties.
17 This Consent Decree may not be enlarged, modified, or altered unless such
18 modifications are made in writing and approved by the Parties and the Court.

19 28. DPSI agrees and acknowledges that final approval of this Consent
20 Decree by the United States and entry of this Consent Decree is subject to the
21 requirements of 28 C.F.R. Section 50.7, which provides for notice of the lodging of
22 this Consent Decree in the Federal Register, opportunity for public comment for at
23 least THIRTY (30) days, and consideration by the United States of any comments
24 prior to entry of this Consent Decree by the Court. The United States reserves its
25 right to withdraw its consent to this Consent Decree based on comments received
26 during the public notice period. DPSI consents to entry of this Consent Decree
27 without further notice to or from the Court.
28

XII. TERMINATION

29. This Consent Decree shall terminate according to the procedure provided in this Paragraph.

a. One year after DPSI has complied with the requirements of Section IV (Injunctive Relief), Paragraph 5 (including having demonstrated compliance through a source test with the Emission Standards as specified in Subparagraph 5.b), DPSI shall provide a written notice to EPA and VCAPCD, stating that DPSI has satisfied all obligations of this Consent Decree and believes this Consent Decree can be terminated. DPSI's notice shall refer to this Paragraph 29.

b. Within SIXTY (60) days after receiving notice from DPSI, EPA will provide DPSI with a written response, either stating EPA's agreement that this Consent Decree is terminated, or stating EPA's determination that this Consent Decree should not be terminated. If EPA fails to provide written response within SIXTY (60) days after receiving written notice from DPSI or if EPA's written response states that this Consent Decree should not be terminated, DPSI may initiate dispute resolution procedures pursuant to Section IX (Dispute Resolution), Paragraph 16.

30. The Court shall retain jurisdiction to resolve any disputes that arise under this Consent Decree, including any disputes pending at the time this Consent Decree is terminated.

XIII. PARTIES BOUND

31. This Consent Decree shall apply to and be binding upon DPSI and its officers, employees, agents, servants, representatives, attorneys, successors and assigns, and those persons in active concert or participation with them who receive actual notice of this Consent Decree by personal service or otherwise, upon VCAPCD, and upon the United States on behalf of EPA. DPSI further agrees to

1 the following provisions with respect to the transfer of any Facility Interest that
2 occurs prior to the time that this Consent Decree is terminated:

3 a. Prior to transferring any Facility Interest, DPSI shall give written
4 notice of this Consent Decree to the proposed purchaser(s) or transferee(s). DPSI
5 shall send a copy of the written notification(s) to EPA and VCAPCD prior to the
6 sale or transfer of any Facility Interest.

7 b. DPSI shall attach a copy of this Consent Decree to any agreement
8 by which it sells or transfers any Facility Interest, and shall ensure that each such
9 agreement obligates the purchaser or transferee to perform the obligations of DPSI
10 under this Consent Decree and is enforceable by both the United States and
11 VCAPCD as a third-party beneficiaries.

12 c. Transfer of any Facility Interest will not relieve DPSI from the
13 obligations of this Consent Decree that are applicable to it. No change in
14 ownership, corporate, or partnership status relating to DPSI will in any way alter
15 the responsibilities of DPSI under this Consent Decree.

16 17 **XIV. EFFECTIVE DATE**

18 32. The Effective Date of this Consent Decree is the date of entry of this
19 Consent Decree by the Clerk of the United States District Court for the Central

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1 District of California. Upon entry by this Court, this Consent Decree shall
2 constitute a final judgment for purposes of Fed. R. Civ. P. 54 and 58.
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4 IT IS SO ORDERED.
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7 United States District Judge DATED: _____
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1 For Plaintiff United States of America:

2 THOMAS L. SANSONETTI
3 Assistant Attorney General
4 Environment and Natural Resources Division

5
6 Dated: 6/3/04

7 W. BENJAMIN FISHEROW
8 Deputy Chief
9 Environmental Enforcement Section
10 Environment and Natural Resources Division
11 U.S. Department of Justice

12
13 Dated: 6/9/04

14 STEVEN A. KELLER
15 Trial Attorney
16 Environmental Enforcement Section
17 Environment and Natural Resources Division
18 U.S. Department of Justice

19 DEBRA W. YANG
20 United States Attorney

21
22 Dated: _____

23 SUZETTE CLOVER
24 Assistant United States Attorney
25 Central District of California
26
27
28

1
2
3 Dated: 21 June 04

4 WAYNE NASTRI
5 Regional Administrator
6 U.S. Environmental Protection
Agency, Region 9
San Francisco, California

7 OF COUNSEL:

8 ARTHUR L. HAUBENSTOCK
9 Assistant Regional Counsel
U.S. Environmental Protection
Agency, Region 9
75 Hawthorne Street
San Francisco, California

1 For Plaintiff Ventura County Air Pollution Control District:
2
3

4 Dated: 6-9-04

5 ~~LEROY SMITH~~ (California Bar #107702)
6 Chief Assistant County Counsel
7 Ventura County Office of the County Counsel
8 800 South Victoria Ave.
9 Ventura, California 93009
10 /

11 Dated: 6-9-2004

12 ~~MICHAEL VILLEGAS~~
13 Air Pollution Control Officer
14 Ventura County Air Pollution Control District
15 669 County Square Drive, 2nd Floor
16 Ventura, California 93003
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For Defendant Diversified Panel Systems, Inc.:

Dated: 8/5/04 _____